

December 13, 1957

Bernard S. Cram,  
Chief of Law Enforcement  
Fish & Game Department  
34 Bridge Street  
Concord, New Hampshire

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CONCORD, N.H.

Dear Mr. Cram:

This is in response to your request of November 22nd for our opinion as to the validity of regulations of the Director of Fish & Game relative to the taking of clams, clam worms and oysters in the coastal areas of the State.

The authority of the Fish & Game Department to make such regulations is derived from RSA 211:61 (supp) and RSA 211:62 (supp). Both of these provisions were inserted by Chapter 251 Laws of 1957. RSA 211:63 (supp) also inserted by Laws 1957, c. 251 provides that:

"(S)uch regulations shall become effective January first following public hearing before the advisory committee and fish and game commission to be held at least ninety days prior to January first."

You advise that no public hearing was conducted and that no recommendations were made by the advisory committee. In view of these circumstances we are of the opinion that the regulations are invalid.

You have also requested our advice as to whether regulations adopted upon the advice of the advisory committee and ninety days after public hearing could have an effective date in 1958 subsequent to January first. Or stated in a more specific manner, whether the public hearing could be held, for example, in December 1957 and the regulations made effective as of April 1, 1958. You advise that if the answer to this question is in the negative, resulting in the removal of all restrictions on the taking of clams during the year 1958, that a serious possibility exists that the clam crop in Hampton Harbor will be destroyed.

We cannot advise with any degree of certainty that regulations with an effective date subsequent to January first will be found valid. Resolution of this matter involves difficult questions of law which only the Supreme Court can finally answer.

ATTORNEY GENERAL  
Bernard S. Cram, Chief of Law Enforcement  
Fish & Game Department

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It would seem desirable, however, for the advisory committee and the Fish & Game Commission to conduct the required public hearing as soon as possible.

You are no doubt aware of the strong possibility that the General Court may be reconvened in Special Session. In view of the urgency of the situation you may wish to call this matter to the attention of the Legislature at that time. A minor statutory change as to the effective date of the regulation is all that would be necessary to resolve the difficulty.

In view of the apparent reluctance of all parties concerned with the Special Session to extend their deliberations beyond the franchise tax question, it might well be advisable to consider the desirability of attempting to obtain an advisory opinion from the Supreme Court in advance of the Special Session. You might wish to discuss this possibility with the Governor who must initiate such action.

As you know, this matter has been briefly discussed with the Governor's office and accordingly a copy of this letter is being sent to the Governor.

Very truly yours,

Elmer T. Bourque  
Assistant Attorney General

ETB/m

CC Honorable Lane Drinell